

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARGARET WACKER,  
Plaintiff,

v.

MASSACHUSETTS MUTUAL LIFE  
INSURANCE COMPANY OF AMERICA,  
Defendant.

Case No. [14-cv-01764-VC](#)

**ORDER GRANTING MOTION TO  
DISMISS WITH LEAVE TO AMEND**

Re: Dkt. No. 9

The third cause of action, for intentional misrepresentation, is dismissed with leave to amend by no later than July 8, 2014. The complaint alleges in very general terms that when Mass Mutual sold its policy to Ms. Wacker, it did not intend to honor the policy. But this general allegation is not sufficient to satisfy the particularity requirement of Rule 9(b). Otherwise, every claim for breach of contract could be converted into a fraud case "so long as the plaintiff adds to his complaint a general allegation that the defendant never intended to keep her promise." *Smith v. Allstate Ins. Co.*, 160 F.Supp.2d 1150, 1154 (S.D. Cal. 2001) (quoting *Richardson v. Reliance Nat'l Indem. Co.*, 2000 WL 284211 \*5 (N.D. Cal. Mar. 9, 2000)).

**IT IS SO ORDERED.**

Dated: June 17, 2014



VINCE CHHABRIA  
United States District Judge